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**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

THE CLINCH COALITION, <i>et al.</i> ,	)	Case No. 2:21-cv-0003-JPJ-PMS
	)	
Plaintiffs,	)	
	)	
v.	)	JOINT STATUS REPORT AND
	)	PROPOSED SCHEDULING ORDER
	)	
UNITED STATES FOREST SERVICE, <i>et al.</i> ,	)	
	)	
Federal Defendants,	)	
	)	
and	)	
	)	
AMERICAN LOGGERS COUNCIL, <i>et al.</i>	)	
	)	
Intervenor Defendants.	)	
	)	

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Plaintiffs, Federal Defendants, and Intervenor Defendants (collectively, the “Parties”), by  
and through their attorneys of record, respectfully submit the following Joint Status Report and

Proposed Scheduling Order:

1. Federal Defendants lodged the Third Supplement to the Forest Service's Administrative Record and Privilege Log on May 9, 2022. ECF No. 81.
2. After email correspondence with counsel for Plaintiffs, and in an effort to avoid or minimize Court involvement, Federal Defendants have agreed to provide a revised Privilege Log.
3. Federal Defendants will also review the currently withheld documents and determine if any portions of the documents can be redacted, which may allow for the release of additional documents or portions of documents.
4. The Parties have different positions on timing:
  - a. **Federal Defendants' Position:** Due to staffing constraints, the Forest Service is hiring a contractor to assist with the redactions and revised Privilege Log. The Forest Service estimates that approximately three weeks are necessary for the contractor to redact the documents and revise the Privilege Log. The Forest Service estimates that it will need approximately two weeks to review and finalize the contractor's work. Approximately one week is then necessary for review by the Office of General Counsel at the U.S. Department of Agriculture and the undersigned. Based on this timeline, Federal Defendants can provide the revised Privilege Log and redacted documents (if any) by **July 7, 2022**.

Plaintiffs' position (below) does not consider the fact that the Forest Service is offering to provide redacted documents, not just an updated Privilege Log with

additional columns. Redacting the documents requires time and several levels of review. The Forest Service's estimate of the time it will take to provide the revised Privilege Log and redacted documents is based on its current assessment of the contractor's ability and Forest Service staffing constraints; Plaintiffs' 21-day demand is arbitrary.

- b. **Plaintiffs' Position:** On April 5, 2022, this Court ordered Federal Defendants to "complete the administrative record, or assert an applicable privilege concerning any such documents, within 21 days." ECF No. 77. The Forest Service sought (unopposed) and obtained a two-week extension to that deadline. ECF No. 80. The Forest Service's Privilege Log (ECF No 81-3) filed May 9 lacks basic information necessary to determine whether the withheld documents currently "may be protected by a deliberative process privilege." ECF No. 77. For example, the Forest Service provides a boilerplate privilege assertion for nearly every document without explaining how the document qualifies as deliberative; it notes the authors of emails but provides no information about recipients; and it provides no indication of which documents contain withheld factual material, only explaining that "to the extent" any factual material is withheld in any document, it is "so intertwined with privileged information that [it] cannot be released." ECF No. 81-4.

Plaintiffs and Defendants continue to disagree over whether the agency must produce documents that the Forest Service expressly relied on in its final rule and

“working law” even if those documents could have been subject to a valid deliberative process withholding at some earlier time. *See* ECF No. 77. The Court has reserved deciding that question “until the defendant has an opportunity to assert an applicable privilege.” *Id.* Plaintiffs agree that a revised privilege log is necessary to the Court’s consideration but object to additional delay of over six weeks for the agency to further review documents it has already identified and add information to the privilege log that should have been included initially. Plaintiffs request that the court order Defendants to provide a revised Privilege Log and redacted documents (if any) within **21 days** of the court entering a scheduling order, consistent with the timeline in the Court’s April 5 Order.

- c. **Defendant-Intervenor’s Position:** Defendant-Intervenors take no position on the need for, or timing of, additional privilege logs. Nor do Intervenors take a position on whether the record is complete. Intervenors favor prompt resolution of the merits and do not oppose submitting a joint status report on merits briefing or further record briefing by July 21.

5. The Parties propose to file a joint scheduling report with dates for merits briefing or further record briefing two weeks after the Forest Service files a revised Privilege Log.

Respectfully submitted on this 24th day of May 2022.

*On behalf of Plaintiffs*

/s/ Patrick Hunter (with permission)

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